IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.9552 OF 2004

Shri Chougule Tanaji Mahadev. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.

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Mr. S. P. Kadam for the Petitioner.
Mrs.M. P. Thakur, AGP for Respondent Nos.1 and 2.
Mr. R.M. Pethe i/b. Mr. R.G. Ketkar for Respondent No.3.
Mr. Pratap Patil for Respondent No.4.
Mr. R.A. Rodriques for Respondent No.5.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 27, 2006.

P.C. (Per Dr.D. Y. Chandrachud, J.) :

In these proceedings under Article 226 of the Constitution two reliefs have been sought (i) a declaration that the Government Resolution dated 18th October 2001 is illegal and that it should be quashed and set aside; and (ii) a direction to the management to continue to pay to the Petitioner his salary for the period 1999-2004. In so far as the first primary relief is concerned, the issue is no longer *res integra* and is covered by a judgment of a Division Bench of this Court in **Vishwaprakash s/o Laxman**

Sirsath vs. State of Maharashtra, 2003(2) Mh. L.J. 176 in which the validity of the very same Government Resolution was called into question. A Division Bench of this Court upheld the constitutional validity of the Government Resolution save and except clause 2(b) thereof, which was held to be unsustainable and quashed and set aside to that extent. The judgment of the Division Bench in **Sirsath** must, therefore, equally apply to the facts of the present case.

It has been stated that the Petitioner was appointed as a lecturer in Zoology with the Fourth Respondent with effect from 20th June 1999 on a temporary basis for one year. Subsequently, he was issued with similar orders of appointment on 1st June 2000, 18th June 2001, 20th June 2002 and 21st June 2003. The appointment of the Petitioner who has not completed the NET/SET qualification has been approved by the university subject to the Government Resolutions dated 13th June 2000 and 17th June 2000 respectively on a temporary basis for the Academic Year only. In **Ananda Dattaram Patil vs. The State of Maharashtra,** (Writ

Petition 4478 of 2005, decided by a Division Bench of this Court on 5th October 2005), this Court took due note of the affidavit filed by Shivaji University to the effect that the appointment of the Petitioner there was through the Local Selection Committee and was approved by the University on that basis. This Court noted that in terms of the university statutes, where a regular vacancy is available that has to be filled in by a committee appointed in terms of the statute of the University for regular vacancies. In that case, this was admittedly not done. This Court rejected the petition with the following observations:

> "The Petitioner in the present petition has sought a relief that Resolution dated 18th October, 2001 is illegal. The said Resolution came up for consideration before a learned bench of this Court at Aurangabad in Vishwaprakash s/o. Laxman Sirsath v. State of Maharashtra – 2003(2) Mh. L.J. 176 where the validity of the said Government Resolution was upheld as set out in the said judgment. The other relief sought is that the communication dated 14th March 2005 is illegal. That

> communication provides for the manner in which in the event there is a temporary vacancy, the appointment has to be made through a local selection committee. We fail to understand as to how the Petitioner can be aggrieved by that communication as it is merely in furtherance of the statute of the University. In the light of that, we find no merit in this Petition."

However, the Division Bench made it clear that in the event that there was a temporary vacancy available and the post had to be filled in through a Local Selection Committee, the Local Selection Committee would consider the Petitioner's working in the post for a long period and further if the post is thereafter advertised and had to be filled in by regular selection, then the Respondent-University was direced to waive the age requirement in the case of the Petitioner. In so far as the present Petition is concerned, the Petitioner' sappointment was made through the Local Selection Committee and is approved by the University only on year to year basis since the Petitioner did not meet the NET/SET qualification.

In these circumstances, this petition shall have to be disposed of and is accordingly disposed of in terms of the order passed by the Division Bench in Writ Petition 4478 of 2005. In the event that the Petitioner has any grievance in regard to unpaid salary, we leave it open to him to take recourse to such remedies which are statutorily available by approaching the competent forum of the Third Respondent. The petition is accordingly disposed of. There shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.